9 FAM 41.106 Procedural Notes

(TL:VISA-185;   02-26-1999)

9 FAM 41.106 PN1 Processing of Applications Submitted Pursuant to 22 CFR 41.102(a)(4) through (7)

9 FAM 41.106 PN1.1 Applications Received by Mail or Messenger Processed on Day of Receipt

(TL:VISA-2;   8-30-87)

a.   Applications received by mail or by messenger should be acted on immediately upon receipt. All processing, including file and visa lookout system checks, a review by the issuing officer, and issuance of the visa should be geared to completing action on routine applications on the day of receipt.

b.   Consular officers should expedite the issuance of new visas to holders of valid visas who have obtained new passports, or, whose visas have recently expired. Some large posts have a special window for repeat walk-in visa applicants. At other posts where consular officers interview nearly all applicants, priority is to be given to persons renewing visas.

9 FAM 41.106 PN1.2 Clearance Procedures

(TL:VISA-185;   02-26-1999)

a.   A consular officer must determine that an alien is qualified to receive a visa before taking favorable action on an application. This determination must be based on the circumstances in each case. In nonimmigrant cases, the Department has established no hard and fast guidelines for consular officers in deciding whether clearance is to be obtained prior to, or after issuance of the visa. In general, however, officers may employ greater flexibility in making clearance checks in a nonimmigrant case than in an immigrant case. *Nothing in this note relieves the consular officer from the responsibility of checking the name of each applicant against the visa lookout system. The consular officer must review all Category I (CAT I) hits generated by the visa lookout system and ascertain whether the hits relate to the applicant. If the consular officer subsequently issues a visa to the applicant, the reason for overriding the Cat I hit must be indicated, either in writing or electronically. Examples of override annotations are: "not the same person," "INS waiver obtained," and "SAO (Department) authorization per (cable reference number)."*

b.   When a completed Form OF-156 indicates that a clearance request should be made to another post, Form OF-179, Biographic Data for Visa Purposes, should be filled out, if possible, by the consular officer. The consular officer should use the information contained in the Form OF-156 rather than requiring the applicant to complete the form. If clearance is to be obtained prior to visa issuance, the alien should be informed of the probable delay and advised that clearance may be obtained by cable or telephone at the applicant's expense. If it appears that the clearance will take more than 2 days, the passport and other unneeded documents may be returned *to the applicant.* Form OF-156 should be annotated with the date and action taken and filed in the consolidated card file, pending receipt of a response to the clearance request. (When both posts are on the CLASS system, there is no need for a VISAS ALPHA cable or Form OF-166, Visa Transmittal Letter, on nonimmigrant visa applicants.)

9 FAM 41.106 PN1.3 Return of Applicant's Passport and Supporting Documents

(TL:VISA-185;   02-26-1999)

There is no requirement that posts charge for postage when passports are returned by mail. Passports delivered by travel agents or messengers should be returned to the applicants. The originals of any additional supporting documents submitted by an applicant should be returned with the passport. The post may retain duplicate copies of the documents. The post will judge whether the local postal system is safe for the return of passports. [See 22 CFR 41.113(h) regarding disposition of documents.]

9 FAM 41.106 PN2 Cases in Which Applicant Is Found Ineligible

(TL:VISA-185;   02-26-1999)

If the consular officer, upon examination of Form OF-156, reaches the conclusion that the applicant does not qualify as a nonimmigrant or is otherwise ineligible to receive a visa, the applicant should be so informed by mail. If a refusal is based on a ground of ineligibility *that* the consular officer believes the alien might overcome, the alien should be advised of the steps to take to obtain a review of the case. The passport and any documents not relevant to the refusal are to be returned to the applicant. [For handling of refusal cases, see 9 FAM 41.121 Procedural Notes .]

9 FAM 41.106 PN3 Visa Lookout Accountability (VLA)

(TL:VISA-185;   02-26-1999)

a.   *Visa Lookout Accountability (VLA) is a permanent on-going requirement with which all visa issuing officers must comply. Officers must properly resolve valid hits before visa issuance.*

b.   Section 140(c) of Public Law 103-236 (Foreign Relations Authori-zation Act, FY-94 and 95, as amended) which became effective April 30, 1996, states the following:

(c) Processing of visas for admission to the United States—

(1)(a)   Whenever a United States consular officer issues a visa for admis-sion to the United States, that official shall certify, in writing, that a check of the automated visa lookout system, or any other system or list which main-tains information about the excludability of aliens under the Immigration and Nationality Act, has been made, and that there is no basis under such sys-tem for the exclusion of such alien.

(b) If, at the time an alien applies for an immigrant or nonimmigrant visa, the alien's name is included in the Department of States visa lookout sys-tem and the consular officer to whom the application is made fails to follow the procedures in processing the application required by the inclusion of the alien's name in such system, the consular officer's failure shall be made a matter of record and shall be considered as a serious negative factor in the officer's annual performance evaluation.

2.   If an alien, to whom a visa was issued as a result of a failure described in (1)(b) is admitted to the United States, and there is, thereafter, probable cause to believe that the alien was a participant in a terrorist act causing se-rious injury, loss of life or significant destruction of property in the United States, the Secretary of State shall convene an accountability review board under the authority of Title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

9 FAM 41.106 PN3.1 Meeting the VLA Requirement

(TL:VISA-185;   02-26-1999)

Under Section 140(c), whenever a consular officer issues a visa, he or she must certify, in writing, that a lookout check has been made and there is no basis for exclusion. The following explains VLA procedures and the provisions for retention of Consular Lookout and Support System (CLASS) records and VLA certifications via paper files and/or archived Machine Readable Visas (MRV) and Immigrant Visas Automated Control System (IVACS) records.

9 FAM 41.106 PN3.2 Issuer vs. Adjudicator

(TL:VISA-185;   02-26-1999)

Section 140(c) speaks in terms of the consular officer who "issues" a visa. For the purposes of VLA, the officer who checks the lookouts and authorizes the printing of the visa is the "issuing" officer. The officer who examines the application and makes the preliminary decision to issue or deny a visa is the "adjudicating" officer. At many posts, the adjudicating officer may not be the same person as the issuing officer.

9 FAM 41.106 PN3.3 Certain U.S. PIT/AFM Employees Unable to Make 140(c) Certification

(TL:VISA-185;   02-26-1999)

U.S. PIT employees and AFMs who have not been designated consular officers for visa purposes (COVP) are **NOT** considered issuing officers and cannot make the 140(c) certification. Under certain limited circumstances, U.S. clerical PITs or AFMs who have not been designated as COVPs may be permitted to authorize the printing of visas after checking the system and ascertaining that there are no CAT I hits. A commissioned consular officer or COVP (both necessarily U.S. citizens) must retain responsibility for visa issuance in such circumstances, however, and make the required certification. This is because compliance with Section 140(c) requires that the certification be done by the "consular officer" who "issues" the visas. The term "consular officer" indicates that only persons fully empowered to adjudicate and issue visas may do the certification. Any post that wants to allow PITs to perform the print authorize function must first seek approval and guidance on procedures and oversight from CA/VO/F/P.

9 FAM 41.106 PN3.4 VLA Procedures

(TL:VISA-185;   02-26-1999)

a.   The Department understands Section 140(c) to mandate a check of the Department's Visa Lookout System (CLASS or DNC) before a visa can be issued. The CLASS/DNC system also includes lookouts provided by other agencies to which officers must give the same consideration as Department-originated CAT I hits. The process described below focuses on serious, Category I ("CAT I") inadmissibilities. While the implications of the Section 140(c) requirement to certify that there is "no basis" under the lookout system for the exclusion of the alien are ambiguous, it is clear that this requires checking and resolving all CAT I hits before the certification is made and a visa can be issued. Thus, the MRV and IV systems have been programmed to ensure that no visa can be printed until an officer has checked the CAT I hits, and documents the reason a visa will be issued (waiver, SAO response, not same person, etc.).

b.   *Whether the statute reaches CAT II hits is less clear. While a CAT II hit may provide an officer with information that could lead to a finding of inadmissibility, CAT II hits reflect prior decisions that may or may not be relevant or binding on the officer handling the new application. Thus, these hits, without further inquiry, do not provide a basis for refusal. Moreover, CAT II hits do not indicate the kinds of security-related bases for refusal that were the focus of Congressional concern in enacting Section 140(c). MRV and IV applications, therefore, have not been programmed to require that an officer check all CAT II hits before a visa may be printed, and issuing officers are permitted to certify that there is "no basis under (the lookout system) for the exclusion" of the applicant without documenting the reason for issuance in the system for every CAT II hit. However, all CAT II hits should be reviewed and resolved before issuance. Thus, the issuing officer should not authorize any case for printing unless he or she can confirm that the lookout system was, in fact checked, and that all CAT I and CAT II hits were handled appropriately.*

9 FAM 41.106 PN3.5 Compliance With VLA Requirement Implemented

(TL:VISA-185;   02-26-1999)

In general, compliance with the VLA requirement has been implemented by adding a VLA module to MRV and IV software. The revised software requires an officer, when checking a case's lookouts, to view any CAT I hits before being allowed to authorize the visa for printing. The officer responds to an on-screen prompt with a reason for overcoming the CAT I hit. As in the past, the act of authorizing the visa for printing signifies the officer's determination that no relevant hits were found. This record, along with the name of the officer who authorized the visa for printing, is retained in the MRV case history file and constitutes the written certification for VLA purposes. All issuing officers at post should be apprised that they will be considered to have made the Section 140(c) certification when they authorize MRV or IV printing. VLA does not affect refusals.

9 FAM 41.106 PN3.5-1 Procedures to Document Compliance

(TL:*VISA-185;   02-26-1999)*

Post procedures to document compliance will depend on what version of the NIV and IV software is in use. The following briefly explains what each of the current versions of NIV and IV systems does to document compliance with VLA requirements, and identifies the interim measures posts without VLA modules will need to take.

*(1)   **Nonimmigrant Visas.** The full VLA module works in the following manner: Before a visa can be authorized for printing, an officer must:*

(a)   View each screen showing any CAT I hits, and

(b)   Choose one or more comments from a list of standardized comments to explain why the visa is being issued despite the hit(s).

(c)   The system then stores a record of the CAT I hits, the name of the officer authorizing issuance, and the officer's comments. The entire record is archived by post and will be retained for a minimum of 11 years. Posts with the VLA module do not need to retain Form OF-156 beyond the current one-year retention requirement.

(2)   **Posts Without a VLA Feature**

(a)   Posts without MRV or IV with a VLA feature should make a printout of all CLASS or DNC name-check results. The printouts should be divided by batch. Any given printout (batch) could include cases with no record (NR), CAT I and/or CAT II hits. The issuing officer should annotate any CAT I hits on the printout with a brief explanation of why the hits are irrelevant. For most cases with multiple CAT I hits, only one comment will be necessary (i.e., "not the same person", "INS waiver obtained", "SAO per State (cable no)", etc.). NR and CAT II hits do not require separate annotations. Each page of the printout should then be rubber stamped with a VLA certification which contains the following language:

"I certify that a check of the Department's visa lookout system has been made and there is no basis under this system for the exclusion of these aliens."

(b)   The issuing officer's name stamp should also be applied and initialed. All Forms OF-156 and the CLASS/DNC printout must be retained at the post for 11 years. It is not necessary to "cut and paste" printouts with the individual Form Of-156. However, the daily printouts and Form OF-156s should be stored together for easy retrieval. After posts convert to the VLA module, the VLA record retention will be done electronically, and the Form OF-156 should be retained only for the standard one-year period.

9 FAM 41.106 PN3.6 VLA Certifications to be Recorded on Printout When VLA Feature is Missing

(TL:VISA-185;   02-26-1999)

a.   Previous guidance treated CAT I and non-CAT I hits separately, requiring certification to be printed on the printout of lookout results for CAT I hits and on the Form OF-156 for NR or CAT II hits. For posts operating on a system which does not contain the VLA feature, all VLA certifications should be recorded on the printout and **not** on the Form OF-156. However, the Form OF-156 must be retained with the printout in all cases.

b.   The purpose of retaining VLA records is twofold. The certification shows that an officer has reviewed all CAT I hits and found no ineligibilities. The printout also shows the lookout results available to the certifying officer at the time of issuance. Maintaining this data even for cases involving no CAT I hits will be useful if questions subsequently arise, e.g., if CAT I data on the applicant is later entered into the system. By applying the certification to the printout in all cases, the VLA record is uniformly kept in one document.

9 FAM 41.106 PN3.6-1 Posts to Stamp Each Page of Printout

(TL:VISA-185;   02-26-1999)

*Posts are now required to stamp each page of the printout. Whereas previous guidance required a certification stamp for each case with CAT I hits, this step allows officers to apply only one stamp per page. It does **not**, however, remove the requirement that an officer annotate every case that has a CAT I hit. Stamping each page of the printout minimizes the possibility of cases with CAT I hits being inadvertently overlooked. Additionally, it ensures that the certification stamp will always be visible and easily found on the same page as the case(s) to which it relates. This will make it easier for the Department to document that the required certification was made should questions ever arise. This step does require modification of the certification stamp language, however, in order to include all cases listed on the page. Until a post has received new stamps, pen and ink changes to the existing certification must be made.*

9 FAM 41.106 PN3.7 Retention of Automated Files

(TL:VISA-185;   02-26-1999)

VLA records are to be maintained for 11 years after issuance. NIV posts are advised not to delete any automated NIV files that are used for Visa Lookout Accountability. Questions regarding file retention should be addressed to CA/EX/CSD.

9 FAM 41.106 PN3.7-1 Immigrant Visas (Except DV)

a.   ***All IV Posts***

The FBI NCIC check is not considered to be a lookout system within the meaning of Section 140(c), although FBI data on specific cases is sometimes reflected in the CLASS system as a "00" or other CAT I hit. Nevertheless, when Department procedures require an NCIC check, whether as a matter of policy or because it is mandated by statute, FBI NCIC "A1" (adverse) name-checks should be treated the same as a CLASS CAT I hit for VLA purposes and an officer must personally review the checks.

b.   ***IVACS Posts***

IVACS posts received the IVACS VLA module and instructions in December 1966 which require an officer to review all CAT I hits and make a VLA statement explaining why the issuance is being authorized, despite the hit(s). A record of the CAT I hits and the officer's comments are stored electronically. The entire record is archived by post and retained for a minimum of 11 years. IVACS posts do not need to include a printout of lookout results in the issued visa packets. Questions regarding IVACS file retention should be directed to CA/EX/CSD.

c. Non-IVACS Posts (excluding modernized IV posts)

Non-IVACS posts should make a printout of each case's name check results. If there are CAT I hits, an officer must note very briefly on the printout why the hits are irrelevant, rubber-stamp the printout with the VLA certification ("I certify that a check of the Department's visa lookout system has been made and there is no basis under this system for the exclusion of the alien"), apply his/her name stamp and initials and staple the printout to the application. The application, with VLA certification, should be placed in the IV envelope for eventual inclusion in the INS "A" file for long term storage.

d. IV (DV) Cases:

The IV (DV) program has a VLA feature. If a post is unable to use this feature, it should use the non-IVACS case procedures. The modernized IV program includes DV processing with a VLA module.

9 FAM 41.106 PN3.8 CLASS vs. DNC – IV and NIV

(TL:VISA-185; 02-26-1999)

a.   When CLASS is available, posts must perform name checks on the CLASS system. When CLASS is temporarily down, DNC name checks suffice for VLA purposes. Posts should maintain clear records of dates DNC was used and note the DNC release date. The release date will help to establish whether hit information was available to the consular officer or COVP at the time of visa issuance. That information should be retained at post for 11 years after visa issuance. (The modernized consular systems record this information automatically.)

b.   If the TC connection to CLASS goes down, the NIV unit often notices first because NIV cases show a "D" or "DEF" in the CLASS column in Wang VS systems. The PC-LAN MRV system and modernized system will automatically switch to DNC when the TC line is not operational. The VS-MRV system does not switch to DNC unless the systems office manually switches it, generally upon request of, and with the cooperation of, the visa unit. The "D" or "DEF" entry indicates that a complete check has not been done and visas should not be issued over that entry. Visa officers and supervisors should **NOT** override a "D" or "DEF" entry; instead, run the name again against DNC, or wait for the CLASS response whenever the TC line goes back up.

9 FAM 41.106 PN3.9 Microfiche No Longer Authorized

(TL:VISA-185;   02-26-1999)

Since all posts now have access to CLASS with DNC as a backup, the use of microfiche for name checks is no longer authorized. Microfiche name checks do not meet the requirements of VLA. Any remaining micro-fiches at post should be disposed of or destroyed.

9 FAM 41.106 PN3.10 Visa Annotations – NIV and IV

(TL:VISA-185;   02-26-1999)

If CLASS or DNC displays a CAT I hit with the same or a similar name to an applicant's name, but the post determines it is not the same person, the visa should be annotated "not the same as CLASS entry." Waivers granted by INS must also be annotated on the visa. If post submits an AO or SAO and determines that the applicant is either not identifiable with the "hit" or is authorized to issue a visa under applicable law and regulations, an annotation, citing the cable number, is also required. For example: "visa issued pursuant to 97 State (cable no.)".

9 FAM 41.106 PN3.10 U.S. PITs to Check/Authorize Printing of Visas

9 FAM 41.106 PN3.10-1 COVPs

(TL:VISA-185;   02-26-1999)

PITs designated as consular officers for visa purposes (COVP) are con-sidered consular officers for VLA purposes and may make a VLA certifica-tion. COVPs will either be in Professional Associate or Consular Associate positions. COVP designation can only be accorded by CA/EX. Although COVP designation can be granted only to U.S. citizens who have success-fully completed the basic consular course, the mere fact of completion of the consular course does not, in itself, confer COVP status on any individ-ual.

9 FAM 41.106 PN3.10-2 AFM or American Clerical PITs Who Have Not Been Designated COVPs

(TL:VISA-185;   02-26-1999)

Posts may, when necessary, request authorization from the Department to allow non-COVP U.S. citizen PITs and AFMs to print-authorize visas after checking the system and confirming that there are no CAT I hits. (Any case with CAT I hits must be passed to the adjudicating consular officer or COVP for issuance.) This should be done only when required by workload and personnel considerations. Moreover, when U.S. citizen clerical PITs or AFMs are given this authority, posts must establish procedures and sufficiently rigorous supervisory oversight to permit the consular officer or COVP responsible for adjudication and issuance of the visa to make the required certification that the system was checked and provided no basis for exclusion. When requesting approval for PITs to authorize printing, posts should provide a justification for using PITs for this function, as well as an explanation of oversight procedures to ensure compliance with VLA. The Department will provide additional guidance on procedures, oversight and supervisory responsibilities to all posts authorized to use PITs for this function.

9 FAM 41.106 PN3.11 Supervisor's Duties

(TL:VISA-185;   02-26-1999)

a.   The consular section chief must submit a cabled statement to the Department (CA/VO/F/P) that he or she has reviewed the section's VLA procedures and that they are in compliance with the Department's instructions. The cable must provide the name of the section chief. It is a permanent obligation of each section chief to submit such a statement to the Department within 45 days of arriving at post.

b.   Supervisors are responsible for ensuring that all issuing officers and COVPs fully understand the VLA provisions and requirements, as well as the consequences for failure to comply with VLA procedures. VLA training should be provided to all current issuing officers at post as well as to all future line officers before they assume issuing responsibilities.

c.   To ensure compliance with Section 140(c)(1)(B), officers responsible for spot-checking issued visas should also confirm that issuing officers have complied with VLA requirements, i.e. that they are checking the lookout system, issuing visas only in compliance with procedures for handling CAT I hits, and are certifying the performance of these duties. A supervisor can most easily spot check a consular officer's VLA checks by accessing some MRV cases with CAT I hits and verifying that the CAT I hits were handled appropriately. The consular section chief should determine the frequency and number of spot checks.

9 FAM 41.106 PN3.12 Instructions for Forwarding VLA Paper Records to Department

9 FAM 41.106 PN3.12-1 Packaging

(TL:VISA-185;   02-26-1999)

a.   *Posts are not required to physically attach name-check printouts to corresponding OF-156 forms. However, when packaging the records, post should ensure that name-check printouts are placed in the same box as corresponding OF-156 forms.*

b.   *VLA records are to be placed into boxes in chronological order, based on the date of visa issuance. The boxes are to be numbered to reflect chronological continuity. For example, box number one might contain records for visas issued from May 1 through May 15; box number two might include records for visas issued from May 16 through May 31, etc. The range of dates covered by each box will vary depending on the workload of each post. Questions regarding the packaging of VLA paper records should be addressed to CA/VO/F/P; Tel. (202) 663-1163; FAX (202) 663-3897.*

9 FAM 41.106 PN3.12-2 Inventory and Shipment

(TL:VISA-185;   02-26-1999)

a.   *Posts must complete a Form DS-693B, Retirement of Records, to accompany each shipment. The Form DS-693B should include a complete inventory, consisting of a description of the forms and the dates covered for each box. For example, the inventory for box number one would read OF-156 Forms and name-check print-outs for visas issued May 1 through May 15, 1996 at (name of post).*

b.   *Posts should place one printed and one electronic (computer diskette) copy of the DS-693B form in the first box of each shipment. Each box should be numbered consecutively on the lower right hand corner of the box: e.g., 1/5, 2/5, etc. Posts should notify IPS/CR/RSC and CA/VO/F/P of the shipment by telegram, identifying the types of records, date of shipment, pouch registry numbers, and volume.*

c.   *VLA paper records should be addressed to the Office of IRM Programs and Services, Records Service Center (IPS/CR/RSC), Department of State, Washington, D.C. 20520. Questions regarding inventory and shipping requirements should be addressed to IPS/PP; Tel (202) 647-5045; FAX (202) 647-5094.*